IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

WP(C).No. 28633 of 2007(H)

AGAINST THE ORDER IN EA.65/2007 IN EP.33/06 IN OS.52/2005 of MUNSIFF COURT,KATTAPPANA

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PETITIONER:

BINDHU, D/O.MATHEW, RESIDING AT
VENGALATHANATHU HOUSE, KARUNAKARANPADY BHAGAM,
EZHUKUMVAYAL KARA, KALKOONTHAL VILLAGE,
UDUMBANCHOLA TALUK.

BY ADV. SRI.S.SACHITHANANDA PAI

RESPONDENT:

VARGHESE, S/O.THOMAS, THAYIL HOUSE,
PUTHENPALAM BHAGUM, EZHUKUMVAYAL KARA,
KALKOONTHAL VILLAGE, UDUMBANCHOLA TALUK,
IDUKKI DISTRICT, EHZUKUMVAYAL - 685553.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.28633 OF 2007

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Dated this the 27th day of September 2007

JUDGMENT

This writ petition is filed to set aside Ext.P4 order passed by the Munsiff, Kattappana in E.A.No.65 of 2007 in E.P.No.33 of 2006 in O.S.No.52 of 2005. The decree holder has filed an application for execution to implement the compromise decree passed in the above case. There, it is submitted that right is given to the decree holder to realise the amount by a charge on the property described. 3 objections, which are sought to be raised now are (1) the property on which the charge is created is not identifiable, (2) the entire extent of the property is not to be sold for realisation of the amount and (3) the value shown in the sale proclamation is grossly inadeqaute and the objection that it will fetch an amount of Rs.10,000/- per cent is not taken into consideration.

2. The Apex Court as well as this Court had cautioned that when the rights in an immovable property is involved and sale is to be ordered, the court shall consider whether it is necessary to dispose of the entire property for the purpose of realisation of the decree amount. It is true that the

petitioner did not move in the right direction in the appropriate time. But that shall not be a ground which will result in injustice to her. Similarly, she disputes about the value of the property. The amended C.P.C. had incorporated a provision whereby the amount shown by her also has to be shown in the sale proclamation. So far as the identification of the property is concerned, I am not impressed with the said contention, especially when a compromise decree is entered into and the party has specifically incorporated the property for which the charge is made. So that objection need not be considered. But the other two points to be considered by the court below after hearing the decree holder as well and if necessary direct the decree holder to produce fresh draft sale proclamation and proceed with the sale in accordance with law. In order to enable the court below to consider the same the sale which stands posted to 29.9.2007 will be deferred for a period of six weeks.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-